Supreme Court, U.S.
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No. 05-865

In The

Supreme Court of the United States

PACIFIC ROCK CORPORATION,

Petitioner,

v.

LOURDES M. PEREZ, in her official capacity as Director of Administration, Government of Guam,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Guam

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The sovereign immunity of the Government of Guam, an unincorporated territory and instrumentality of the United States, is derivative from that of the federal government, and is recognized by federal law both through an act of Congress and under federal common law. The question presented in this case is whether this Court should exercise its supervisory authority and grant certiorari to resolve a conflict among several circuit courts and the court of last resort of the territory of Guam over the federal question of whether sovereign immunity creates an exception to the final judgment rule of *res judicata*?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties are as stated in the caption, with the Government of Guam being the real party-in-interest for defendant.

Pacific Rock Corporation is a non-governmental corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock.

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Pacific Rock Corporation v. Lourdes M. Perez, in her official capacity as Director of Administration, Government of Guam, 2005 Guam 15, 2005 WL 2738328 (Guam Terr. 2005) (Supreme Court of Guam, 2005). *App. 1.*

BASIS FOR SUPREME COURT JURISDICTION

The Supreme Court of Guam entered its judgment on October 12, 2005. *App. 21.* Petitioner Pacific Rock Corporation ("Pacific Rock") seeks review of that judgment on a writ of certiorari. The petition is timely filed under 28 U.S.C. §2101(c) and under Rule 13.3 of this Court.

This Court has jurisdiction under 28 U.S.C. §1257 and 48 U.S.C. §1424-2 to review on a writ of certiorari the judgment of the Supreme Court of Guam.

STATUTES INVOLVED IN THE CASE

48 U.S.C. §1421a. Unincorporated Territory – Government. Guam is hereby declared to be an unincorporated territory of the United States and the capital and seat of government thereof shall be located at the city of Agana, Guam. The Government of Guam shall have the powers set forth in this Act, shall have power to sue by such name, and, with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the

> Government of Guam of any of its lawful powers. The Government of Guam shall consist of three branches, executive, legislature and judicial, and its relations with the Federal Government in all matters not the program responsibility of another Federal department or agency, shall be under the general administrative supervision of the Secretary of Interior.

STATEMENT OF THE CASE

In November of 1994, Pacific Rock filed suit in the Superior Court of Guam against Guam's Department of Education, a line agency of the Government of Guam ("DOE") for the amount of the unpaid balance it claimed DOE owed for the construction of several temporary classrooms. After a trial on the merits, the trial court awarded Pacific Rock $514,258.76, plus pre-judgment and post-judgment interest. DOE appealed. *App. 2-3 ¶ 2.*

On appeal ("*Pacific Rock I*"), DOE challenged the trial court's decision on several grounds, but did not challenge the trial court's award of post-judgment interest to Pacific Rock on sovereign immunity grounds. Thus, the issue of sovereign immunity was not addressed in *Pacific Rock I.* The Supreme Court of Guam reversed the judgment of the trial court (*Pacific Rock v. Department of Educ.*, 2000 Guam 19, 2000 WL 979988 (Guam Terr. 2000). Pacific Rock then petitioned for rehearing of *Pacific Rock I. App. 3 ¶ 4.*

In opposition to Pacific Rock's Petition for Rehearing, DOE again did not raise the issue of sovereign immunity with respect to the post-judgment interest awarded to Pacific Rock by the trial court. After granting the Petition

for Rehearing, the Supreme Court of Guam reversed itself and affirmed the judgment of the trial court. See *Pacific Rock v. Dept. of Educ.*, 2001 Guam 21, 2001 WL 1360155 (Guam Terr. 2001) (*"Pacific Rock II"*). *App. 35-68.* The Supreme Court of Guam then issued its mandate to the trial court affirming the trial court's decision. *App. 71.*

A few hours after the Supreme Court of Guam issued its opinion in *Pacific Rock II* affirming the trial court's judgment, the Supreme Court of Guam issued its opinion in *Sumitomo Construction v. Government of Guam*, 2001 Guam 23, 2001 WL 1360165 (Guam Terr. 2001) where it was held that post-judgment interest cannot be awarded against the Government of Guam because the legislature did not waive its sovereign immunity with respect to post-judgment interest. DOE, upon losing its appeal in *Pacific Rock II*, petitioned the Supreme Court of Guam for rehearing, but again did not challenge the trial court's decision awarding post-judgment interest to Pacific Rock. The Supreme Court of Guam denied DOE's petition for rehearing. *App. 4 ¶ 6.*

On January 22, 2003, Pacific Rock filed a Petition for Alternative Writ of Mandate which sought payment of the judgment out of the Government of Guam's "Claims Fund". On the same day, the trial court issued the Alternative Writ of Mandate, commanding Lourdes Perez, in her official capacity as the Director of Administration of the Government of Guam, to pay the judgment out of the Government Claims Fund, or show cause why she had not. *App. 5-6 ¶ 11.*

At this point the defendant first raised the defense of sovereign immunity for the post-judgment interest, based on *Sumitomo.* However, in light of the mandate from the

Supreme Court of Guam affirming the trial court's earlier decision, the trial court issued its Decision and Order on January 29, 2003, holding, *inter alia*, that the award of post-judgment interest at the rate of 6% to Pacific Rock against DOE was valid. *Disision Yan Otden, App. 23-34.*

On March 28, 2003, the trial court issued a Judgment on the writ in favor of Pacific Rock. *App. 69.*

The Guam Attorney General appealed the judgment to the Supreme Court of Guam, collaterally attacking the judgment of *Pacific Rock II* on the grounds that the Government of Guam's sovereign immunity precluded judgment for post-judgment interest (the "Writ Case"). The decision of the Supreme Court of Guam on that issue is the subject of this petition for review. See *Pacific Rock v. Lourdes M. Perez, in her official capacity as the Director of Administration, Government of Guam*, 2005 Guam 15, 2005 WL 2738328 (Guam Terr. 2005). *App. 1-19.*

The main issue on the appeal was "whether sovereign immunity will lie as an exception to the general rule of *res judicata*." *App. 9-10 ¶ 23.* The Supreme Court of Guam found that *res judicata* applied because "[a]n official-capacity suit is really just another way of suing the government", quoting *Conner v. Reinhard*, 847 F.2d 384, 394 (7th Cir. (Wis.) 1998). *App. 8-9 ¶ 22.* But as to whether sovereign immunity is an *exception* to application of the *res judicata*, the court acknowledged that the federal courts have "ruled either way". *App. 11 ¶ 25.* On one hand are cases holding that a sovereign who fails to invoke its immunity while the litigation is pending cannot do so after the lawsuit has ended or foreclosed by the decree; e.g., *City of South Pasadena v. Mineta*, 284 F.3d 1154 (9th Cir. (Cal.) 2002), 52 Fed.R.Serv.3d 294; (citing *Gunter v. Atlantic*

Coast Line R. Co., 200 U.S. 273, 26 S. Ct. 252, 50 L.Ed. 477 (U.S.S.C. 1906)). *App. 11-12 ¶ 25.*

On the other hand are the holdings that in special circumstances sovereign immunity can trump the application of *res judicata*; e.g., *U.S. v. U.S. Fidelity & Guar. Co.*, 309 U.S. 506, 60 S. Ct. 653, 84 L.Ed. 894 (U.S. Okla. 1940) (involving federal sovereign immunity) and *Jordon v. Gilligan*, 500 F.2d 701, 18 Fed.R.Serv.2d 1280 (6th Cir. (Ohio) 1974), *cert. den.*, 421 U.S. 991, 95 S. Ct. 1996, 44 L.Ed.2d 481 (U.S. Ohio 1975) (involving state government immunity).

Pacific Rock, however, relied primarily on a Seventh Circuit case addressing the very arguments the government was making on appeal, *U.S. v. County of Cook, Ill.*, 167 F.3d 381 (7th Cir. (Ill.) 1999), *cert. den.*, 528 U.S. 1019, 120 S. Ct. 527, 145 L.Ed.2d 408 (1999). *Cook*, a case closely on point with the present action, held that the United States Government could not assert its sovereign immunity against a judgment for taxes, interest, and penalties imposed in a case that had reached final judgment (citing *U.S. v. Stauffer Chemical Co.*, 464 U.S. 165, 104 S. Ct. 575, 78 L.Ed.2d 388 (U.S. Tenn. 1984); *Nevada v. U.S.*, 463 U.S. 110, 103 S. Ct. 2906, 77 L.Ed.2d 509 (U.S. Nev. 1983), and distinguishing *U.S. v. USF&G., supra*).

The Guam Supreme Court, however, rejected the analysis employed by the Seventh Circuit in *County of Cook* and held that the doctrine of sovereign immunity was unwaivable under federal law without legislative consent, that the Supreme Court of Guam lacked subject matter jurisdiction to award post-judgment interest in *Pacific Rock II*. Judgment was therefore issued reversing the award of post-judgment interest (*App. 20*), which was